death. In the circumstances in which the wounds were inflicted, ie during a struggle in which six persons were assaulting the deceased, we are of the view that you might not have specifically intended to kill the deceased, but we are satisfied that on the evidence, you intended to stab the deceased with the knife in the chest and the back which you did with considerable force, and the bodily injuries you inflicted were sufficient in the ordinary course of nature to cause death and did cause the death of the deceased. We are of the view that on the evidence the prosecution has proved beyond a reasonable doubt that your action in stabbing the deceased fell within limb (c) of s 300 of the Penal Code.

As to the defence of provocation, the DPP has submitted that on the evidence there was no provocation, or no grave and sudden provocation or, in any case, the retaliation was not proportionate to the provocation. The DPP referred to the following factors: (1) you had the presence of mind to arm yourself with a knife; (2) you did not know the cause of the assault or how seriously TAS had been assaulted; (3) although the deceased replied in abusive language and told you to mind your own business, it was insufficient to provoke you or to amount to grave and sudden provocation; (4) when the deceased ran away, you did not need to protect yourself; (5) you were about the last person to reach the deceased when he was being assaulted by the Tan brothers and before you stabbed the deceased, he did not offer any provocation to you, nor were you in fear as he was already struggling on the ground against five persons and yourself; (6) the Tan brothers did not find it necessary to use dangerous weapons to assault the deceased to teach him a lesson for assaulting their father, but you found it necessary to use a knife.

Having considered the submissions of your counsel and that of the DPP in the light of the evidence adduced against you and the evidence you have offered in defence, we have come to the conclusion that, although as a 'foster' son and a 'sworn brother', you must have felt a great deal of anger towards the deceased, and was therefore provoked at the time you were told of the assault, there was either no provocation or no sudden and grave provocation caused to you at the time the wounds were inflicted. In our view, the evidence shows that when you first heard of the assault, you did not lose your self-control entirely but had the presence of mind to arm yourself with a knife, that when you confronted the deceased and when he used abusive language against you, you were not sufficiently provoked to lose your self-control by attacking him there and then. In fact, you again had the presence of mind to tell Ah Geok to snatch the stools from the deceased. In our view, any provocation which would have caused you to lose your self-control at that time ceased when the deceased ran away and when he was being chased by the Tan brothers.

Furthermore, by the time you caught up with the deceased, he was struggling on the ground against the assault of four or five persons, and when you stabbed him, he did nothing which could be considered as provocative to any ordinary reasonable person, taking into account your age and the class of society from which you came. The Tan brothers did not lose their self-control when they assaulted the deceased in retaliation for the assault on their father. The injuries collectively inflicted by them were not serious in comparison even with the non-fatal injuries inflicted by you. We are unable to find that you were so provoked as to lose your self-control when you inflicted the fatal wounds on the deceased with a knife. We do not accept that you are entitled by your code of honour to react the way you did, which was wholly disproportionate to any provocation that could have been caused to you.

Accordingly, we find that on the balance of probabilities you have failed to prove the defence of provocation under the law. We find you guilty of murder and we convict you as charged.

Accused convicted.

Solicitors: *Tan Lee & Choo.*

Reported by *Terence Tan Bian Chye*

Public Prosecutor v Lim Kian Tat

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 21 OF 1988
LAI KEW CHAI AND CHAN SEK KEONG JJ
27 MARCH 1990

Criminal Procedure — Statements — Admissibility — Whether made voluntarily or under circumstances of oppression

The accused was charged with the murder of a Caucasian girl. The deputy public prosecutor sought to admit three oral statements and two written statements allegedly made by the accused. Expert witnesses were also called by the prosecution.

Held, acquitting the accused without calling on his defence:

(1) The reliability of the first oral statement depended on the memory of one of the policemen as there was no record of it anywhere. It was not given in evidence at the preliminary inquiry but was reduced into writing nearly three years later. The court was not satisfied beyond reasonable doubt that the statement was that of the accused.

(2) The third oral statement was made by the accused after two periods of interrogation of six to seven hours each. The court was satisfied that the accused was tired and confused.

(3) The fourth (written) statement was made during an 18-hour interrogation. The court was satisfied that there had been oppression. The fifth (written) statement was made after

the threat of further interrogation induced the accused to make it.

Legislation referred to
Criminal Procedure Code (Cap 68, 1985 Ed) ss 122(6), 188(3)
Penal Code (Cap 224, 1985 Ed) s 304A

Sant Singh for the accused.
Loke Yoon Kee for the Public Prosecutor.

Cur Adv Vult

Lai Kew Chai J (delivering the judgment of the court): The accused, a 23 year old male Chinese, was tried by us on the capital charge of having committed murder by causing the death of one Irene Louise Prinsen, a 24 year old Caucasian girl from New Zealand, on 6 October 1985 at about 2am at the 22nd level, Block 12, North Bridge Road, Singapore.

At the close of the case for the prosecution, counsel for the accused submitted that the prosecution had failed to adduce 'some evidence (not inherently incredible)' which if we, as deciders of law, were to accept as accurate, would establish that the accused had at the 22nd level of the block of flats lifted the deceased over the parapet wall and had thrown the deceased to her death at the canopy of the 2nd level of the block of flats.

We were sure and it was not disputed in cross-examination that the accused was the last person who was seen with the deceased alive and that the accused after the fatal fall had reported to the police that there was a case of suicide. In opening the case against the accused, the deputy public prosecutor stated that the prosecution would rely on one of the statements purportedly made by the accused during which the accused was alleged to have demonstrated to Sgt Raymond Roy how he lifted the deceased over the parapet wall. If this statement was in fact made by the accused, it would have amounted at the close of the case for the prosecution to credible evidence that the accused had at least placed the deceased over the parapet wall and had, inferentially, caused her to fall, subject to any defence which might be raised if the defence was called.

The prosecution also indicated that the pathologist, Prof Chao Tzee Cheng, who had visited the scene and had performed the autopsy on the deceased, would refer to five injuries sustained by the deceased which were not caused by or sustained in the course of the fall from the 22nd level. We were also told that Prof Chao would opine that the five injuries were sustained as a result of a struggle before the fall. If these crucial opinions were to stand after cross-examination at the close of the case for the prosecution, obviously there would have been credible evidence which would support an irresistible inference, subject to the any defence that might have been raised, that the accused and the deceased did have a struggle shortly before her fatal fall.

The prosecution then disclosed that at the 22nd level Sgt Raymond Roy at about 3.20am on 6 October 1985 found a footprint in the inner parapet wall and another set of footprint on the outer parapet wall. Both the footprints were quite clear and they showed the toes pointing downwards. In addition, marks which appeared to be palm prints were also found on the concrete awning or roof canopy. The presence of the footprint marks on the outer parapet wall was to Prof Chao most unusual. The deputy public prosecutor told us that Prof Chao would tell us that in his opinion, the deceased must have been held (a) on the outside of the parapet wall and (b) by someone for a brief moment for the footprint to be imprinted. Professor Chao would further express the opinion that the deceased could have been holding on to the roof canopy with the foot touching the parapet wall before she fell. If these opinions had stood at the close of the case for the prosecution, the defence would have had to be called.

Towards the end of his opening statement, the deputy public prosecutor told us that the prosecution would adduce evidence from Dr Owen Edwin Facey, a forensic scientist attached to the Metropolitan Police Forensic Science Laboratory, London, United Kingdom. The DPP indicated that Dr Facey would testify that the footprints which were found on the outer parapet wall at the 22nd level of the block, which were sent to him for examination, showed the footprint of the left foot of the deceased. Dr Facey would also say that he found a second mark which was the heel print probably made from the right foot of the deceased. Dr Facey would also opine that the footprint on the outer parapet wall could not be made in the course of a fall.

The DPP concluded his opening statement by submitting that the prosecution would prove beyond reasonable doubt that the accused intended to cause the death of the deceased at the 22nd level of the block 'by lifting her over the parapet wall and later throwing her down'. That was in summary the case of the prosecution.

In the course of the case for the prosecution, counsel for the accused successfully persuaded us to exclude the statements allegedly made by the accused. The five injuries sustained by the deceased were either shown by the defence to be related to the fall or were sustained in the course of the fall or, at the lowest, serious doubts were thrown on the opinion of the Prof Chao that they were not related to the fall or not sustained in the course of and when the body of the deceased was handled and carried over the parapat wall to the mortuary. Further, Prof Chao in the course of cross-examination had to concede that if the deceased had sat on the edge of the parapet wall it was physically possible for her to have held herself slightly outwards and made the footprint marks on the outer parapet wall. Dr Facey, after hearing all the evidence in court, did not feel himself qualified enough to venture the opinion, as Prof Chao did, that the deceased must have

been held on the outer parapet wall for a brief moment before she fell to her death.

In the light of (a) the different light thrown on the prosecution evidence as a result of careful and skilful cross-examination; (b) the revised opinions of Prof Chao as to how the injuries of the deceased were sustained, which could not be said to be not due to the impact of the fall or sustained in the course of the fall; (c) our refusal to admit the statements allegedly made by the accused either because we were not sure they were his statements or because we had doubts whether they were voluntarily made; and (d) generally the entire circumstances of the case, the course of police investigations including the fact that the deceased was mentally very anxious over the prospects of returning to her hometown after having broken off with her boyfriend, we accepted the submission of learned counsel for the accused that no case has been made out against the accused which, if unrebutted, would warrant a conviction. We accordingly acquitted the accused of the charge of murder without calling for his defence. We now proceed to recite and evaluate the evidence in some detail.

The deceased was in Singapore in transit on her way to New Zealand, having flown from Tel Aviv via Athens. She arrived at the Changi International Airport, Singapore at about 9.50pm on 4 October 1985. The first evidence of the accused having anything to do with the deceased was given by Ng Teck Chua, a catering officer of Olympic Airways who worked at the Changi International Airport. The deceased had flown from Athens to Singapore on a flight of the Olympic Airways. Ng said that the accused had approached him at about 11pm on 4 October 1985 and had mentioned that the deceased had wanted an endorsement on her air ticket to ensure her onward flight to Auckland, New Zealand. Evidence was also given by Wendy Ng Siew Kuan, a traffic officer of Olympic Airways. Her evidence was that at about 10.50pm on the night of her arrival in Singapore the deceased had told her that she wanted an endorsement from her on her air ticket so that she could use her Olympic Airways ticket and fly to Auckland in another air carrier, if necessary, since her flight on Olympic Airways was subject to availability of a seat. According to Wendy Ng, the deceased was wait-listed in Athens and Singapore as the Olympic Airways flight was over-booked. At about 12.15am on 5 October 1985, Wendy Ng made the endorsement. As shown by the air ticket dated 1 October 1985 which Olympic Airways issued to the deceased, she was booked subject to an available seat to leave Singapore on a flight of Air New Zealand at 7.30pm on 8 October 1985. Her air ticket was endorsed so that she could fly by another carrier if she could not get on the Air New Zealand flight. After the endorsement the deceased could have left Singapore earlier if the other carrier had an available seat. Wendy Ng said that the deceased wanted the two options as she was concerned about her return to New Zealand. In cross-examination, Wendy Ng was asked about the demeanor of the deceased when arranging her onward flight to Auckland. She said the deceased might have been a little anxious about getting a seat and beyond that she could not add anything useful. We appreciated the point that the deceased was therefore rather anxious to return home.

At 9.15am later that Friday morning, the deceased checked into the Nam Hai Hotel at Bencoolen Street, Singapore. According to Lawrence Nathan, the manager of the hotel, the accused accompanied her. She checked into room No 34. Ten minutes later, she left the hotel with the accused.

The next relevant evidence to which we should turn established, albeit inferentially as the accused was not identified, that at about 1am or 1.30am on 6 October 1985 the accused was seen in the company of the deceased waiting near the lift at the 21st floor of the building, at the foot of which the deceased was found dead about an hour later. Madam Chang Fong Thai, a housewife who lived in a flat on the 21st floor, said in evidence that at that time she had opened the door of her flat for two of her husband's friends as they were leaving after playing mahjong with them. Outside her flat, she saw a young female Caucasian and a male Chinese standing near the lift. She did not identify the accused or the deceased. In cross-examination, counsel did not touch on the identity of the Caucasian lady nor that of the male Chinese. On being asked, this witness said that she did not pay attention as to whether there was anything unusual about the couple. She had closed the door of her flat as soon as she had left her two guests out. It should be noted that at the commencement of her cross-examination counsel for the accused established that this witness, after returning to her flat that Sunday morning, had heard a loud thud and that before hearing this loud thud she did not hear any screams nor any other kind of noises coming from outside her flat. Obviously, learned counsel for the defence was making the point that it was at least rather odd that if the deceased had been bundled over the parapet wall, held for a moment, however brief, and then dropped, as the prosecution asserted, how was it that the deceased did not scream at all.

The two guests of Madam Chang and her husband were Lim Lam San and Yeo Keih Hwa, both school teachers. Their evidence was that at about 1.30am that Sunday morning, they were leaving Madam Chang's flat after a game of mahjong. They saw a young female Caucasian and a young male Chinese near the lift. When the lift came, all four of them went into the lift. They got off the lift at ground level and they went their separate ways. Lim elaborated that the couple in the lift were not holding hands. He did not notice their appearance. But the couple

was not quarrelling and neither of them was crying. Yeo in cross-examination said that there was nothing unusual in the appearance of the couple. The shirt of the male Chinese was not crumpled nor was the dress of the Caucasian female who was neither sad nor angry.

A shop assistant, Lim Kim Ann, was sitting on a bench in front of Block 12 North Bridge Road from about 10.45pm on 5 October 1985. His back was facing the block of flats. At about 2am on 6 October 1985 he heard a 'thud' coming from the block. A few moments later, the accused approached him and told him that someone had committed suicide. The accused asked him to call the police. He refused. He told the accused to call for the police himself from a public telephone. The accused went across the road and he followed him and saw him making the telephone call. Lim Kim Ann in elaboration of his evidence said that it was about five minutes after hearing the thud that the accused approached him. He said the accused looked excited. When cross-examined, he said that he did not hear any screams before he heard the thud. He said that at those small hours of the morning it was quite quiet in the vicinity of the block.

The telephone call made by the accused was received by Teresa Tan Kah Choo, a woman police constable. At about 2.07am on 6 October 1985 she received a call from one male who identified himself as Mr Lim. The caller spoke in English. The caller told her that there was a suicide case and that a lady was lying at the ground floor of Block 12, Crawford Street which was the other road near the block. The caller said the lady was a European. Teresa Tan then contacted the ambulance and the Operations Room, Beach Road Police Station. She recorded the message in the police message form. The text of the message was: 'There is a suicide here. A lady is lying at the ground level.'

The first police officer at the scene was PC Yeo Hen Guan. He was a crew commander of a patrol car. At about 2.08am on 6 October 1985, he received a message from the Operations Room to go to the block. He was told to go and attend to 'a case of fatal fall'. On arrival at North Bridge Road near the block, he met the accused who appeared nervous and frightened. From there, the accused led him to the second level canopy where he saw the deceased lying there in the position as shown in a photograph admitted and marked exh P4, photograph no 4. Then they took a lift to the 21st level and from there they proceeded to the 13th level after which they went to the 24th level. They then went down to the 22nd level. There the accused pointed to him a pair of white shoes lying side by side next to the parapet wall. PC Yeo then preserved the scene and telephoned for his duty officer to go to the scene. At about 3.20am AIO Ng Swee Eng arrived at the scene and he handed the investigations over to him. Subsequently, Sergeant Raymond Roy also arrived at the scene. In cross-examination, PC Yeo agreed that he did not tell the accused that he was detaining him but for all purposes the accused was detained. He said that he was told it was a suicide case and that he was looking for some evidence, such as a stool, which the deceased might have used to commit suicide. He said he came to the conclusion the accused was nervous and frightened because he looked pale and was panting. He said he did not question the accused as to why he was nervous or frightened. He also stated that he did not record his observation in his log-sheet the fact that the accused appeared nervous and frightened. The nervous and frightened demeanor of the accused, of course, could either reveal something sinister or shock by the fatal fall.

At about 2.35am on 6 October 1985 the ambulance officer, Lim Li Hua, arrived at the scene and examined the deceased. She found the deceased lying on her right side in a pool of blood at the edge of the canopy. Her ears and nose were bleeding. After examining the deceased, the ambulance officer pronounced her dead. The ambulance officer said that the deceased was lying in the position as shown in photograph exh P4. The next exhibit, exh P5, was a photograph which showed the deceased lying on her back. In cross-examination she said the deceased was not lying face up when she first saw her dead body.

Ng Swee Eng was an assistant investigation officer attached to the Beach Road Police Station. After being informed of a case of fatal fall at Block 12, North Bridge Road, he proceeded to the scene arriving there at about 2.50am. He met PC Yeo Hen Guan who was with the accused. AIO Ng proceeded to the 2nd level, Block 23. At the canopy of that level he saw the deceased lying in a pool of blood. The deceased had a leather pouch strapped on her left shoulder. He also noticed that she was not wearing any shoes and that the soles of her feet were dirty with black dust. AIO Ng said that the deceased was lying on her right side. He remembered that her right hand was lying below her shoulder level. At about 2.55am, he proceeded to the 22nd level with PC Yeo. He could not remember whether the accused was with him. There he found a pair of white laced shoes. AIO Ng turned over the body of the deceased before photograph exh P5 was taken. He said he just turned her over by touching her on her left shoulder. He did not touch her body below the waist. After police photographs were taken of the scene and the deceased, AIO Ng went to the 22nd level and seized a pair of white shoes. He examined the inside of the shoes and found they were clean and there was no dust. At the scene, he established the identity of the deceased as one Irene Louise Prinsen. AIO Ng then went on to say that he had a conversation with the accused. It was a short conversation which lasted between five to ten minutes. He asked him questions and he gave answers. The accused was quite hesitant in giving his answers. According to AIO Ng, the accused appeared restless and worried. At 3.20am, Sgt

Raymond Roy arrived at the scene and he handed over the investigation to him. At 9am the same morning, AIO Ng identified the deceased to the State Coroner at the Singapore General Hospital mortuary.

At about 12pm the same day, AIO Ng again visited the scene. He was in the company of Prof Chao Tzee Cheng, the pathologist, Insp Lee Chee Chiew and other officers. At the 22nd level, AIO Ng found footprints on the inner and outer faces of the parapet wall. He also noticed some prints on the canopy of that level which appeared to him to be thumb prints. He said that the footprints on the outer face of the parapet wall showed that the toe were pointing downwards. Similarly, the footprints on the inner face of the parapet wall also showed that the toes were pointing downwards. In cross-examination, he said that it was Sgt Raymond Roy who first noticed the footprints.

In cross-examination, AIO Ng said that he tried to make enquiries from the occupants at the 21st, 22nd, 23rd and 24th levels. He did not succeed in interviewing any occupant. He suspected foul play because of the inconsistencies of the answers given by the accused. He said that neither he nor any of the officers record any statement or make any notes of any statement of the accused. We therefore did not have any details of the answers which would support the opinion of AIO Ng that the accused had given inconsistent answers. But he agreed that leaving aside the question of the alleged statements of the accused, he had no reason to suspect foul play. In cross-examination, AIO Ng said that he saw Prof Chao Tzee Cheng at the mortuary at about 10.45am that day. As directed by Prof Chao, he caused police photographs to be taken of the deceased lying on the mortuary slab. He said that Prof Chao examined the body of the deceased for about half an hour. Prof Chao told him that he suspected foul play and he requested to visit the scene. At the balcony of the 22nd floor he saw a footprint on the inner side of the parapet wall and another three footprints on the outer side of the wall. One of them was quite clear showing the toes pointing downwards.

On 6 October 1985, the accused was medically examined by Dr Naranjan Singh, the doctor of the prison hospital. He found no injury on the person of the accused.

Prof Chao carried out the autopsy at 9am on 7 October 1985. He drew a body diagram of the deceased which was admitted as exh P58a. He certified that the cause of death was multiple injuries. He found the deceased weighed 5,070g and was 160cm in height. There was dirt on the soles of both feet. Prof Chao took swabs of the fingernails of the deceased to find out if there had been any human skin or tissues beneath the fingernails and none were found. His examination of the pelvic region of the deceased revealed that the external genitalia did not show any evidence of trauma. The hymen showed serrated edge and was intact, admitting one finger only. There was no tear or bruise. The vaginal wall was normal. The smears taken were negative of spermatozoa. The anus was slightly lax with an old tear in the 10 o'clock position. There was no evidence of penetration and the smear was negative for spermatozoa. The deceased therefore had died a virgin and was not sexually molested in any way.

In his autopsy report (exh P58), Prof Chao had described the external injuries in the following terms:

Injuries consistent with fall:

1 Laceration 8 x 2cm at right shoulder with surrounding abrasion.
2 Large patch of bruise at right upper arm 14 x 4cm.
3 Large patch of abrasion at right forearm 14 x 6cm with a laceration 6 x 5cm at the elbow and another laceration 1cm at the wrist. There were fractures of the upper and lower ends of the right radius and ulna.
4 Lacerations at the right palm with fracture of the metacarpals.
5 Bruise at the back of both hands.
6 Abrasion 3 x 2cm at the right hip region.
7 A laceration on the left hip region 2.5cm with some abrasions around.
8 Small abrasions at left inguinal region.
9 Laceration at the inner side of the right upper thigh.
10 A long linear bruise with blanched centre and erthyematous margins running from the right buttock down the posterior surface of the right thigh and leg consistent with hitting a long object such as railing.
11 Abrasions were present in both ankles.
12 Laceration at left popliteal fossa.

Injuries not consistent with fall:

13 Bruise around right eye lid with conjunctive haemorrhage in the right sclera consistent with being hit such as a blow by fist.
14 Bruise at the left chest region consistent with a blow.
15 An oblique linear bruise with blanched centre and erythematous margins 18 x 3cm in the lower abdomen with a linear abrasion on the right side 7 x 1cm consistent with pressing against an edge.
16 Round and oval shaped bruises on both thighs and legs consistent with finger tip pressure marks.
17 A row of small abrasions on the left toes consistent with rubbing against a rough surface.
18 Bruises on the palmer side of both hands consistent with grappling some object very tightly.

The above classification did not stand up to closer scrutiny. Prof Chao upon cross-examination conceded that three injuries which were numbered 15, 17 and 18 could have been caused by the deceased climbing over the parapet wall. In relation to injury No 16, which were oval shaped bruises and which the professor said could have been caused by finger pressure applied shortly before death, the professor again conceded that such injuries could have been caused by police attendants who had to carry the body of the deceased at and from the canopy of the second level where the body was found over the parapet wall at that level and from there down the flight of steps to the ground floor. We refer to injury No 14, the

bruise at the left chest region which the professor in evidence identified as being below the left clavicle and which he opined in evidence as consistent with having been caused by a blow of the fist. The body chart (exh P58a) drawn by the professor clearly showed that this injury was below the left nipple and not beneath the left clavicle. Learned counsel pointed out that the overhang of the left breast would have been in the way of any blow by the fist to which the professor observed that the injury could have been caused if the blow was 'properly directed'. However, on being asked if the injury could have been caused by the deceased knocking into a wall, the professor commented that the breast would have been in the way.

We turn to injury No 13, the bruise around the right eye lid with conjunctival haemorrhage which the professor had ventured the opinion that this was consistent with a blow from the fist. The suggestion was obvious that the deceased was assaulted in the right eye before she fell. However, the opinion of Prof Chao on the cause of this injury did not survive cross-examination. Aided by an expert opinion, learned counsel for the defence asked Prof Chao who agreed that the injury could have been caused by blood seeping through to the eyelids as a result of the fracture at the base of the skull. Learned counsel then referred to the railings at the canopy which were about 6m from the line of the parapet walls in the block of flats, the fact that the deceased had landed on the canopy very close to the railings and that the deceased had sustained injury on the right side of her leg. On being asked, Prof Chao agreed that injury No 13 could have been sustained as a result of a second fall. In dealing with all six injuries learned counsel pointed out to us that at the preliminary inquiry, Prof Chao had stated that injury Nos 13 to 18 'included injuries caused by blows, fingertip pressures and marks consistent with pressing against an edge and bruises on the palm on both hands consistent with grappling some object very tightly' and that '(t)hese were consistent with some forms of struggle prior to the fall'. In examination-in-chief, to questions by the learned deputy public prosecutor, Prof Chao had said he did not know if one could say that there was a struggle: 'How would I know that she was struggling?' But on being confronted with what he had said at the preliminary inquiry, the professor changed his opinion and stuck by his evidence given at the preliminary inquiry. Learned counsel for the defence therefore submitted that Prof Chao's opinion on the issue whether there was a struggle was wholly unreliable.

Prof Chao had also given his opinion as to how the deceased had fallen from the 22nd level. The first version was this: the deceased was seated on the parapet wall, made the footprints and fell. The second version was that she was held outside the parapet wall by someone and then pushed by that person. The third postulation was that she was outside the parapet wall without being held by any person and in that situation the deceased could have made the footprints found at the outer wall. As it later emerged in the cross-examination, the third postulation was identical to the postulation of the defence which was represented by a diagram (exh D9) drawn of the deceased when she made the footprints shortly before the fall. Dr Facey had observed that the footprints were found at 0.7m from the top of the wall and it was clear on the measurements that a person of the height of the deceased could not have been seated on the wall and made the footprints on the outer wall. So Prof Chao was constrained to withdraw his first version. We now refer to the third version and in giving the third version we had observed that the professor had given a demonstration of a person outside the wall with two hands stretched behind and gripping the top of the parapet wall. Prof Chao had thought that this was one probable version as to how the deceased had come to be outside the parapet wall, without the aid of any other party. But on learning that the defence was making the same postulation Prof Chao attempted to express some reservations about that version which was, originally, one of and the last of his three versions.

The state of the prosecution evidence relating to the question as to how the deceased had fallen was this. There were Prof Chao's two surviving versions, namely, that someone held the deceased outside the parapet wall or she had held herself outside the outer wall. If the first version was the only version, obviously the accused would have had a case to answer as the irresistible inference was that he was the only person in the company of the deceased at the time and that he must have the person, subject to any defence that might be raised. If the evidence was that the deceased could have held herself outside the wall and made the prints before she fell, then there would be no case for the accused to meet. In that situation, the accused did not cause the death of the deceased.

We would now summarize Dr Facey's evidence. He was sent the footprints made on the outer wall and the prints from the left foot of the deceased. He said that examining the prints alone and taking no other evidence into account there were sufficient matching details that he was driven to the conclusion that the footprints found on the outer wall were made by the deceased. However, he carefully pointed that the footprints lifted from the outer wall were not so clear and that he was unable to say conclusively that looking at them alone those footprints were made by the left foot of the deceased. In the light of other evidence, such as the fact that the deceased had fallen from outside that parapet wall at that particular time when shortly thereafter the footprints were lifted, we were satisfied that there was credible evidence that the footprints were indeed made by the left foot of the deceased. Dr Facey in his evidence has postulated three parameters, namely, first, that the deceased was facing outwards of the

parapet wall, otherwise the toes could not have been pointing downwards; secondly, taking into account the measurements of limbs of the deceased and the third parameter, the waist of the deceased must have been below the top of the parapet wall when the footprints were made; and thirdly, the feet of the deceased must have been 0.7m from the top of the parapet wall. Finally, Dr Facey told us in evidence that the footprints were entirely consistent with having been made by the deceased when she was held outside the parapet wall by someone or having been made by the deceased who held herself outside the parapet wall as postulated in exh D9 by learned counsel for the defence who had prepared it with the assistance of an expert. He said both versions were equally probable on the evidence. To the question which of the two versions would be more probable Dr Facey said, 'I can't comment'. He explained that he could not comment because it involved 'too many variables and matters beyond my expertise'.

It remains for us to deal with the alleged oral and written statements which were allegedly made by the accused to the police. The learned deputy public prosecutor sought to admit three oral statements and two written statements allegedly made by the accused. Their admissibility were objected on the grounds that they were not statements made by him or they were not voluntarily made by him. The voir dire lasted 17 days. At its conclusion, we did not admit any of the five statements. We gave our reasons which we now reproduce:

The first oral statement:
This was allegedly made on 6 October 1985 between 3.40am and 5.45am by the accused to Sgt Raymond Roy. It was not given in evidence at the preliminary inquiry. Almost three years later, and on the 11th day of this trial on 4 October 1988 the oral statement was reduced into 2 1/2 pages by the prosecution who on the second day of the voir dire gave notice of the same under s 188(3) of the CPC. The reliability and accuracy of the oral statement depended entirely on the memory of Sgt Roy; there was no record of it anywhere. We are not satisfied that the prosecution has proved beyond reasonable doubt that it was the statement made by the accused, seeing that the prosecution itself has described the 2 1/2 page record as 'the gist' of what the accused had allegedly said at the scene and in the light of the evidence which we have heard.

The second oral statement:
This was allegedly made to Sgt Roy and Inspector Lee on 6 October 1985 between 5.40am and 7.40am at the Beach Road Police Station. The prosecution has pointed out that it is not seeking to admit this statement as the accused might be tired, might be confused.

The third oral statement:
This was allegedly made by the accused to Sgt Roy and Inspector Lee on 7 October 1985 at about 5.15pm when the accused was brought back to the scene the afternoon following the incident. It was recorded in exhs D2 and D11, the investigation diary of Sgt Roy and the investigation diary of AIO Ng Swee Eng respectively. The accused was asked about the events leading to the death of the deceased, after he had undergone two periods of interrogation of about six to seven hours each. We are satisfied that he was tired and confused. In any case, the accused did not incriminate himself, even in regard to the charge under s 304A Penal Code, causing death by a rash act, which was the only charge he was facing.

The fourth statement (written) taken between 7.50am, 7 October 1985 and 3.10am on 8 October 1985:
This was taken during an 18-hour interrogation, with an hour's break. It was taken during the fourth night in a row in which the accused did not have any adequate sleep. The charge the accused was facing was one under s 304A Penal Code. We are satisfied that the accused had spoken, after the police had rejected his earlier versions, and had spoken when he would not have otherwise. He mentioned attempted strangulation until the deceased was semi-conscious, in respect of which there was no forensic evidence of any marks around the neck of the deceased which would have been present if the incident had happened. Similarly, his alleged punches on the face of the deceased left no evidence except for a punch on the right eye of the deceased. We are aware that in a voir dire we are not to inquire into the truthfulness or otherwise of statements made but we infer that these statements, contradicted as it could not be disputed by hard forensic evidence, were made in circumstances where there was oppression.

The fifth statement (written) made on 14 October 1985:
It was made after protracted CID interrogation. It was a reiteration of what the accused had said in his earlier written statement except for three matters which were brought up in the course of the CID interrogation. It followed the accused's s 122(6) statement given in response to the murder charge in which the accused had withdrawn his previous written statement and proclaimed his innocence. We do not accept Sgt Roy's evidence that this statement (exh P64 for identification) was recorded as he merely wanted clarification about the brown substances which had been recovered from the person of the accused. We are satisfied that the threat of further interrogation induced the accused to make this statement.

Formal evidence was led after we had ruled on the admissibility of the five statements. These were followed by submissions by learned counsel for the defence that there was no case to answer and by the learned deputy public prosecutor that defence should be called. In view of the evidence led and the reasons which we had given, we decided not to call upon the accused to enter upon his defence and we, accordingly, acquitted him of the charge of murder.

Accused acquitted.

Solicitors: *Sant Singh & Partners.*

Reported by *Terence Tan Bian Chye*